

Managed Risk Medical Insurance Board  
October 24, 2007, Public Session

Board Members Present: Cliff Allenby, Areta Crowell, Ph.D., Sophia Chang, M.D., M.P.H., and Richard Figueroa, M.B.A.

Ex Officio Members Present: Ed Heidig (on behalf of the Secretary for Business, Transportation and Housing) and Ruth Liu (on behalf of the Secretary for California Health and Human Services Agency).

Staff Present: Lesley Cummings, Denise Arend, Laura Rosenthal, Ronald Spingarn, Shelley Rouillard, Terresa Krum, Janette Lopez, Ernesto Sanchez, Seth Brunner, Carolyn Castaneda, Larry Lucero, Renee Mota-Jackson, Thien Lam, Naomi Yates, Cynthia Reed, and Adrienne Thacker.

Chairman Allenby called the meeting to order at 10:59 am.

**ITEM 3. REVIEW AND APPROVAL OF MINUTES OF SEPTEMBER 19, 2007**

The Board reviewed the minutes from the previous meeting. A motion was made and unanimously passed to approve the minutes of the September 19, 2007 meeting with no changes. These are available at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/Agenda\\_Item\\_3\\_Public\\_Min\\_09-19-07.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/Agenda_Item_3_Public_Min_09-19-07.pdf)

**ITEM 4. REVIEW AND APPROVAL OF 2008 BOARD MEETING SCHEDULE**

The Board reviewed the scheduled 2008 meetings. A motion was made and unanimously passed to approve the schedule. The schedule is available at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/Agenda\\_Item\\_4\\_2008\\_Board\\_meeting\\_schedule.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/Agenda_Item_4_2008_Board_meeting_schedule.pdf)

**ITEM 5. STATE LEGISLATION UPDATE**

**Item 5a. Special Session**

Laura Rosenthal, Chief Counsel, presented a summary of the key elements of the recently introduced bill embodying the Governor's Health Care Reform proposal; many of these elements were in a 10-page document issued by the Governor's office earlier in the year.

Ms. Rosenthal's presentation highlighted: An individual mandate for persons to purchase coverage; a MRMIB operated purchasing pool for subsidized and unsubsidized persons; creation of a tax credit for certain persons to purchase coverage; expansion of coverage through HFP and Medi-Cal; increasing Medi-Cal provider rates; creation of new rules for the individual insurance market, including guaranteed issue and renewal of policies by plans and insurers; requiring employers to offer Section 125 plans; cost containment measures; and, financing provisions. The summary is available at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/Item5.a\\_for\\_10-24-07\\_FINAL.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/Item5.a_for_10-24-07_FINAL.pdf).

Ronald Spingarn, Deputy Director Legislation and External Affairs, presented a summary of health care bills introduced in the Special Session. He highlighted the following:

ABX1-3, authored by Assembly Member Dymally, expresses intent to fully fund the Major Risk Medical Insurance Program (MRMIP) by generating new revenues, guaranteeing coverage for persons in California regardless of pre-existing health conditions and making reforms in the individual market.

Chairman Allenby commented that dealing with MRMIP is critical if larger health care reform is not enacted.

Ms. Cummings noted that the Speaker has not yet introduced a bill in the Special Session, but his bill in the Regular Session, AB 8, established rules for carriers in the individual market and was linked with AB 2, authored by Assembly Member Dymally, which created the financing mechanism for MRMIP. The relationship between ABX1-3 and other Special Session bills is unclear.

Mr. Spingarn continued with his summary.

ABX1-7, authored by Assembly Member Nakanishi, would require a person to be rejected twice by a health plan before they would be qualified to enroll in MRMIP. Currently, there is a requirement for only one rejection.

SBX1-5, authored by Senator Cox, would redirect funding from the First Five Commission to the HFP and other unspecified health programs.

SBX1-25, authored by Senator Cox, would extend the sunset date for the Guarantee Issue Pilot program from December 31, 2007 to December 31, 2010.

The complete report is located at [http://www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/5a\\_Leg\\_Status\\_Report\\_Special\\_Session.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/5a_Leg_Status_Report_Special_Session.pdf).

Chairman Allenby asked for comments from the public. There were none.

#### **ITEM 5b. Regular Session Summary**

Mr. Spingarn presented a summary of the final disposition of bills MRMIB has been following in the regular session. He highlighted the following:

AB 8, the Speaker's health care reform bill, was vetoed.

AB 343, which would have required MRMIB and EDD to report employers with 25 or more employees enrolled in public insurance programs, was vetoed.

AB 1328, which would have repealed a six-month state residency requirement for applicants to the Access for Infants and Mothers (AIM) program, was vetoed.

AB 1750, giving MRMIB authority to discuss all contracting strategy, not just that relating to health, dental and vision plans, in closed session was signed.

SB 137, which would have adjusted income determination methods for the California Children's Services (CCS) program, potentially letting additional children into the program, was vetoed.

Dr. Crowell asked what the veto message said. Mr. Spingarn replied that he did not have that with him. Chairman Allenby asked that the veto message be sent to the Board. Dr. Crowell asked how the issue is addressed under the Governor's Health Care Reform proposal. Ms. Cummings said that children up to 300 percent of FPL, including those who are undocumented, would be eligible for coverage under HFP and/or Medi-Cal, both of which use a CCS carve-out.

The report is located at [http://www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/5b\\_Leg\\_Status\\_Report\\_Regular\\_Session.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/5b_Leg_Status_Report_Regular_Session.pdf).

Chairman Allenby asked for comments from the public. There were none.

#### **ITEM 6. FEDERAL BUDGET, LEGISLATION AND EXECUTIVE BRANCH ACTIVITY**

##### **ITEM 6a. SCHIP Reauthorization**

Mr. Spingarn said that reauthorization activities in Washington, DC have been moving quickly. The House Rules Committee may be negotiating this evening and

may send a bill to the President as early as this week. There are attempts to get enough votes to override a veto. Potential sticking points on negotiations include a possible cap on federal matching funds at 300 percent of FPL, enrollment of lower income children before higher income children, and immigration issues. Chairman Allenby noted that the federal government thinks they already have the authority to define a standard for enrolling lower income children—an issue which will be discussed later in the meeting.

Dr. Chang said she wants to hear Congress and the representatives of the Bush administration talking about increased funding.

Ms. Cummings presented a handout highlighting how much federal funding California needs and the impact of not getting enough federal funds. The handout, located at [http://www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/6aPresident-GrassleyBaucus.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/6aPresident-GrassleyBaucus.pdf), shows:

- The bill vetoed by the President would have provided \$35 billion above the baseline. Staff believes California would have had sufficient funding under the bill. It is only possible to know for sure how much money states would receive in the first of five years under the bill. For years 2-5, MRMIB staff assumed California would receive 16 percent of the total federal funds allocated. This is what California received in FFY 2007.
- Under President Bush's proposal (no additional funding in federal fiscal year 2008 with a \$5 billion increase over 5 years), California would not have enough funding.

Under the President's proposal, California would be short \$265 million in federal funds in FFY 2008. If California were to reduce enrollment to live within the lower level of funding, 260,000 children would be disenrolled on October 1, 2007. If California waited until January 1, 2008 343,000 children would have to be disenrolled. Waiting until April 1, 2008 would mean 515,000 children disenrolled. If the State took no action to reduce enrollment, in hopes that that the needed funds would be provided, and if the funds were not provided, HFP would have no funding for the last quarter for the federal fiscal year (July-September 2008).

Caroline Castaneda reviewed a handout, "Illustrative Examples of Actions That May Be Needed Under "Flat" Funding". The handout details the impact of "flat" federal funding (2007 funding level) for federal fiscal year 2008. A summary of the handout follows:

Option #1: Beginning January 1, 2008, if HFP froze enrollment for both new applicants and any subscriber who fell out of the program, approximately 17,000 slots per month would not be filled and approximately \$50 million in federal funds would be saved.

Option #2: Beginning January 1, 2008, if HFP disenrolled subscribers at their annual eligibility review and froze enrollment per option #1 California would save \$240 million. There would be a reduction of around 70,000 subscribers per month (64,000 from persons disenrolled at their annual eligibility review and 8,000 more from persons who normally disenroll on their own and would not automatically be allowed to return).

The handout is located at located at  
[www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/6aFlatFundingexamples.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/6aFlatFundingexamples.pdf).

Chairman Allenby commented that staff seems to be assuming that the only option for reducing expenditures was reducing enrollment. Ms. Cummings replied that staff did make that assumption for these examples, but that staff, in conjunction with the Department of Health Care Services, is researching other options. Many of these require statutory changes, however.

Dr. Crowell asked why the handout shows that the waiting list and disenrollments must remain until July 2008. Ms. Castaneda explained that it is to compensate for overspending.

Ms. Cummings indicated that the chart was prepared last night and could, perhaps, be clearer. However, staff wanted to give the Board some idea of savings associated with freezing enrollment and disenrollments at AER.

Chairman Allenby noted that many states already have a process in place to address reduced federal funding. Ms. Cummings said that California used to have regulations allowing establishment of a waiting list, but CMS required deletion of the regulations as a condition of approving California's waiver to cover parents whose children are in the program. Ms. Rosenthal noted that while California did not end up implementing parental coverage due to a lack of state funds, the waiver did not expire until early in 2007. Thus, the situation now facing the Board is new.

Ms. Cummings presented a list of 21 states facing projected SCHIP shortfalls in 2008 with "flat" funding and a list of those that will not have a shortfall. The estimates were developed by the Congressional Research Service (CRS). CRS projects a \$342 million shortfall for California versus the \$265 million shortfall projection made by MRMIB staff. However, both CRS and MRMIB project California will run out of funds entirely in June 2008. In other words, California lacks funding for a full quarter. CRS shows 14 states running out of SCHIP funds before California --- some states have prepared disenrollment letters and plan to send them out if additional funding is not secured before November 16. Ms. Cummings said it is important that California's delegation understand that the situation can not wait until June to be addressed. Chairman Allenby commented that the other 20 shortfall states should be communicating their situations as well to generate Congressional interest in dealing with the problem. Ms. Cummings expressed frustration that when policymakers see that California runs out of funding in June, they think that there is more time to deal with the problem. They don't appreciate that states can't wait until they are

completely out of money. She noted that Mr. Spingarn and she will be traveling to D.C. in the next week.

The documents are located at

[www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/6a\\_CRS\\_ShortfallStates\\_Enrollment.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/6a_CRS_ShortfallStates_Enrollment.pdf) and  
[www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/FY2008\\_SCHIP\\_States\\_No\\_Shortfall\\_10-22-07.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/FY2008_SCHIP_States_No_Shortfall_10-22-07.pdf).

Ms. Cummings brought the Board's attention to a fact sheet on HFP that staff developed. It clarifies facts about SCHIP in California and the potential impact of the Baucus bill on California. The fact sheet is located at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/Item\\_6a\\_SCHIP\\_Fact\\_Sheet.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/Item_6a_SCHIP_Fact_Sheet.pdf). In addition, Governor Schwarzenegger issued a press release with a statement about the President's veto of the Baucus bills. The press release is located at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/Governors\\_Veto\\_Statement\\_Press\\_Release\\_10-30-07.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/Governors_Veto_Statement_Press_Release_10-30-07.pdf). Lastly, a paper written by Peter Harbage on behalf of the California HealthCare Foundation shows the potential impact on California of reduced SCHIP funding. The paper is located at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/6a.PossibleImpactUponCAOfReducedSCHIPFunding.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/6a.PossibleImpactUponCAOfReducedSCHIPFunding.pdf).

Ms. Cummings asked Mr. Harbage to comment to the Board on any areas that he felt staff might have missed. Mr. Harbage noted that the California HealthCare Foundation has extended his funding to work on SCHIP issues. He is trying to work with the CRS to determine why they projected a \$342 million shortfall for California versus \$265 million projected by MRMIB staff. He is comfortable with the lower estimate and suspects that it is more detailed and current than the CRS estimate. There is a range of numbers that may be used regarding the chart showing the number of children projected to be disenrolled by month. If the Board decides to pursue the option of disenrolling children, then the numbers can be looked at more closely. He reiterated that the sooner the Board acts, the fewer children would need to be disenrolled.

Dr. Crowell expressed appreciation for the content of the SCHIP fact sheet as it addresses inaccuracies in how representatives of the Bush Administration have characterized SCHIP, at least as they have been reported in the media. She has found these misinterpretations appalling. Communicating the correct information to policy makers quickly is very important.

Mr. Harbage commented that California is lucky to have the resources to get information out about SCHIP and has had a fair amount of success in doing so, including editorials in the Sacramento Bee and Los Angeles Times. Chairman Allenby remarked that, nevertheless, a lot of misinformation has been put out on the street to confuse the issue. Mr. Harbage acknowledged the point. He noted one



example of misinformation: a statement by the President that the SCHIP reauthorization bill would allow coverage for children in families making up to \$83,000 a year which is demonstrably false. But, he thinks that MRMIB has been doing as much as it can to communicate the true story of SCHIP and HFP. He is honored to have been able to help with the effort and grateful for the resources to do so.

Dr. Crowell commented that the design of HFP was a deliberate effort to use the private health care market to deliver coverage and she finds vexing the characterization of SCHIP as a program leading to government health care. Mr. Harbage said that about 80 percent of children enrolled in HFP are in private health plans and this is true in most states.

Ms. Cummings said that another point MRMIB staff is emphasizing is that while HFP goes to 250% of FPL, the average subscriber has family income of 163 percent of FPL. The higher the income level, the greater the incidence of employer sponsored coverage. However, when a family does not have access to employer sponsored coverage, they have to earn a mighty high income to find coverage in the individual market affordable.

Chairman Allenby asked for comments from the public. There were none.

**ITEM 6b. Adoption of Emergency Healthy Families Program Regulation Authorizing the Board to Establish a Waiting List and Authorizing the Board to Require Disenrollments if it Determines Such Action Necessary Given Inadequate Funding**

Lesley Cummings said that MRMIB staff brings the emergency regulations to the Board with a heavy heart. Chairman Allenby commented that he assumed staff was doing so in case the federal government does not provide sufficient funding. Ms. Cummings replied that the matter was on the agenda today because it takes around a month for emergency regulations to be in effect. Staff is not recommending taking action today to establish a waiting list and disenrollment process, but adopting regulations that authorize such actions if it becomes necessary.

It is the first month of federal fiscal year 2008 and states do not know how much funding they are to receive nor how long their funding is to last. If California does not obtain the full funding required, staff will look at a number of options. And staff would recommend implementation of the regulations only under dire circumstances. But, the Board needs to have these tools in its tool box, particularly in light of the fact that the earlier action is taken, the fewer children would have to be affected.

Chairman Allenby said that if the federal government works out an agreement, which he expects will happen, then the Board should think in a more leisurely way about having authorities in place to respond to funding shortfalls.

Ms. Cummings began a page by page review of the proposed regulations. She explained that the regulations would not be implemented unless the Board makes a finding at a subsequent meeting that the fiscal situation warrants implementation. The Board could decide just to close the program to new enrollment or also to close the program to new enrollment and disenroll subscribers at their annual eligibility review. Children would be placed back in the program in the order in which they were placed on the waiting list. The administrative vendor would not finalize an eligibility determination until there is space available because an applicant's circumstances could have changed while the application was wait listed. Infants born to AIM mothers would be enrolled upon their birth but would be disenrolled at their annual eligibility review a year later.

Chairman Allenby asked for comments and questions.

Mr. Figueroa asked if adopting the proposed regulations basically restores the authority that the Board used to have before the State proposed to expand coverage to adults through a federal waiver, but with a new option for disenrolling children. Ms. Cummings confirmed this.

Public Comment:

Deena Lahn, Children's Defense Fund and a member of the 100% Campaign, commented that advocates feel have been able to work well with the Board and staff. She acknowledged the excellent work MRMIB staff has been doing on SCHIP reauthorization. But advocates take a different view of this difficult situation than the program managers and urge the Board not to adopt the proposed regulations. Healthy Families is a tremendously successful program, and adopting emergency regulations authorizing disenrollments or a waiting list sends the wrong message. MRMIB manages HFP well, but it is not the funder of the program. The funders are parents, the state and the federal government. While the federal government is not doing the job it should, the state legislature should have a chance to weigh in on the issue. The Board should send a formal letter to the Legislature describing the situation. Further, there are other actions, short of a waiting list, that could be taken.. For example, in a worst case scenario, the state could move some children from HFP into Medicaid. While this would be administratively difficult, it would allow for half the cost to be paid by federal funds, as opposed to dropping children entirely out of coverage. Also, the state could return AIM to a state-funded program to free up federal dollars. Considering what order to disenroll children should also be considered. CDF urges the Board not to adopt the regulations at this time. If the Board does adopt regulations, CDF thinks that they should be more contained. CDF will follow up with a letter making suggested changes. For example, CDF is concerned that Section 2699.66303(a) does not have an exact definition of "sufficient funds," that "will" should be a "may" in that section, and that Section 12699.6603(b) is too blunt in requiring disenrollment at annual eligibility review. Instead the Board and the Legislature should together decide how to carry out this action.



Michelle Wood, Community Health Councils and the California Covering Kids and Family Statewide Coalition, indicated that they too have worked productively with the Board for many years. She acknowledged that the situation is very difficult and the Board is facing real challenges. As the Board contemplates moving forward, she wants to raise several policy considerations. How should children be prioritized for entry into and disenrollment from HFP? Which children should be retained? What are the criteria for determining this? If enrollment is frozen, children will go without needed care. What if an applicant placed on the waiting list has significant health conditions? Will there be any exceptions for the waiting for medically needy children? The impact on members of her coalition would be significant and messaging this policy change will be difficult at the community level. It is important that outreach enrollment agencies are given adequate materials, training and strategies to emphasize the importance of renewals and retention and information about the new policies. The actions have implications for other policies in California, specifically health care reform, but also on other health insurance programs, including the Healthy Kids, CalKids, and Kaiser's program. It is important that the Board consider the impact on these other health insurance programs.

Donna Fox, California Nurses Association, asked if the timing is right for this action by the Board. How long could the Board delay doing something before officially starting the clock with the Office of Administrative Law? It may not be possible to revise the emergency regulations before they go into effect. Chairman Allenby asked if she was requesting that the Board take some time to listen to suggestions from her and others before actually filing the regulations package. She concurred with his summary, also suggesting that addressing the problem during the special session on health care might be a possibility, given the fact that children's health care is a top priority for many policy makers.

Beth Capell, Health Access California, indicated that she was submitting a letter to the Board and staff, apologizing for not having gotten it in earlier. Health Access joins the 100% Campaign and other children's groups in asking that the Board defer action on the emergency regulations. While appreciating staff's desire to be fiscally prudent, adopting the regulations would be premature. Given the report made by staff and other accounts, it is not clear what Congress and the President will do. The Executive Director's memo repeatedly refers to this uncertainty. If the Governor and President are committed to universal coverage as others have suggested, there are other ways to assure that California will not have to disenroll children during the current budget year. She said that work could be done with the Legislature and the Governor during the budget process next year to address whatever materializes in Washington, DC.

Chairman Allenby asked if she was suggesting that the Board bet that the funding will come. She replied that MRMIB staff has advised the Board that it faces substantial uncertainty and the Administrative Procedures Act (APA) states that emergency regulations are not to be based on speculation. She believes that adoption of the regulations would constitute making a decision based on speculation as to what the

President and Congress will do, what the Governor and Legislature will do. Recent amendments to the APA make it clear that emergency regulations must be based on substantial evidence. Given testimony of MRMIB staff, there is uncertainty and it is premature to adopt regulations. Also, Ms. Capell said, the regulations lack clarity, another of the standards in the APA. The regulations do not state if a waiting list and disenrollments would be done simultaneously or sequentially and are not clear about what the trigger would be regarding insufficient funding. She said that Health Access concurs with the Chair's observation that a more considered process would allow for greater clarity with respect to the language of the regulations.

Al Hernandez-Santana, California Catholic Conference, requested that the Board defer adopting emergency regulations.

Brenda Kaplan, Blue Shield of California, expressed concern that children whose families have incomes over \$40,000 would lose eligibility for CCS under the proposed regulations. She asked the Board to adopt exceptions for children who are actively being treated for cancer through CCS so that they can continue their treatment. Chairman Allenby said that is a legitimate concern.

Chairman Allenby asked for staff observations. Ms. Cummings said that California does not have a farthing in federal funding for the program after November 16. This is not speculation but fact and is the backdrop for the proposed regulations. MRMIB staff anticipates further Congressional action but that does not negate the fact that there are no federal funds after November 16. MRMIB staff has discussed prioritizing children with consideration to their health status, but staff does not have any way to know a child's health status. Chairman Allenby commented that the CCS aspect is scary. Ms. Cummings agreed. She noted that staff did do some investigation about whether it is possible to know if a child is in CCS at the time of their annual eligibility review. Staff was told, although it is not yet confirmed, that two-thirds of the state has information about CCS eligibility in the MEDS system. However, for several large counties, including Los Angeles, the information is not in MEDS. Ms. Rouillard said the counties have separate eligibility systems.

David Jimenez, Children's Medical Services Branch of the Department of Health Care Services (DHCS), indicated that he works for the CCS program. The Chairman asked him to address the Board. Mr. Jimenez said there is a case management system for 56 counties called CMSNet, but Los Angeles and Sacramento have stand-alone systems. Thus, around 10,000 HFP children receiving CCS services are not in the MEDS system. However, DHCS staff contacted both counties and they can provide a tape of their children in CCS who are HFP eligible. Sacramento should be on MEDS this year and Los Angeles hopefully will be on by the end of next year. The Chairman thanked Mr. Jimenez for the information.

Laura Rosenthal said that MRMIB staff believes the Board has the authority to adopt emergency regulations and that it may do this within existing APA standards, including any amendments. Staff is aware of the amendments. In addition, at

present it is that the HFP has federal funding only through November 16. Regarding whether MRMIB should take action administratively, rather than working with the Legislature, current law requires the Board to take steps to limit enrollment if there are insufficient funds. The Legislature may want to look at additional options that are within its authority but beyond the authority of the Board. But, the Board must have standards and authority in place in case it becomes necessary to limit enrollment. Chairman Allenby stated his understanding that MRMIB does not have to authority to incur a deficit without first informing the Administration. And the Administration's hands are severely tied in terms of its ability to operate in a deficit unless the Legislature approves the deficit. Ms. Rosenthal stated that this is correct, in view of the legislative and budget process as well as the Healthy Families statute requiring the program to live within its means and limit enrollment if it cannot live within its means.

Chairman Allenby remarked that he thought the board has some time given the active discussion in Washington. He suggested that staff consider the testimony provided today. He said that the Board and staff will continue to follow what is happening in Washington, DC, and, in accordance with the public notice requirements, may schedule meetings in case the Board must act on the situation. The staff should also look at a longer-term basis to ensure that the Board has broad authority to act when funding problems occurs so that the Board does not find itself in this emergency situation again. He asked the other Board members if they agreed with this approach.

Dr. Crowell asked Ms. Cummings to review the timeline again, indicating that she thought the Board needed to take action to minimize the number of children adversely affected if reductions become necessary. Ms. Cummings indicated that the next time the Board could meet, given the 10 day public notice requirement would be on November 5<sup>th</sup>. Once the Board adopts the regulations, it would take up to 32 days before they would be in effect. As drafted, the proposed regulations require the Board to make a finding at a public meeting that implementing the wait list or disenrollment process is fiscally necessary.

Chairman Allenby said the Board should tentatively schedule a meeting for November 5<sup>th</sup>. Board members agreed to do so. He asked MRMIB staff to work with CCS to see if it is possible to exempt CCS children from disenrollment. Ms. Cummings agreed to do so.

#### **ITEM 6c. Centers for Medicare and Medicaid Service (CMS) Restrictions on SCHIP Eligibility**

Peter Harbage presented a paper, funded by the California HealthCare Foundation, assessing the ability of California to comply with SCHIP "rules" issued by CMS in a letter to all states on August 17. The paper is located at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/AssessingCompliancewithSCHIP-Final-10-05-07.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/AssessingCompliancewithSCHIP-Final-10-05-07.pdf)

The CMS rules would require states that currently or wish to cover persons above 250 percent FPL to satisfy certain requirements.

Mr. Harbage said there are questions about the ability of the federal government to apply the rules to states such as California that already cover children up to 250 percent FPL. He emphasized that the CMS rules are not rules in a legal sense. They were not promulgated by regulations but rather were transmitted in a letter. But in his remarks, he intends to focus on the rules themselves.

California has several populations paid for by SCHIP funds with incomes over 250%: the AIM program, the Healthy Kids programs and children who would have been eligible for HFP had it not been for the application of income disregards. And, of course, the expansion of HFP to 300% under health care reform proposals would be affected. Mr. Harbage then reviewed each of the eight rules and commented on whether California was or could be in compliance with them. The letter requires a state to comply with all eight prior to covering children above 250%. He concluded that California would have great difficulty complying with two of the rules, and some difficulty complying with 3. He indicated that the letter marks a serious departure from how CMS has approached SCHIP enrollment issues in the past and would make it very difficult for California to keep its program as currently designed.

Ms. Cummings said that the bipartisan compromise bill passed by Congress (and vetoed by the President) would have nullified the rules in the CMS August 17<sup>th</sup> letter. Dr. Crowell said everything about the letter is bad news and inconsistent with what California's policies have been. She asked if the current discussion about reauthorization continue to include overturning the letter. Ms. Rosenthal said that a post-veto compromise bill that has been on the table would have delayed and changed the CMS provisions. Ms. Cummings said she did not know whether the issue was still active, but thought that getting the President's signature on a bill that overturned the rules seemed difficult.

Chairman Allenby opined that California should be able to satisfy the rule requiring that 95% of children with family incomes below 200% must be enrolled if health care reform were enacted. He asked whether this would make a difference. Ms. Cummings said that because there are other rules that California could not satisfy, it wouldn't make a difference.

Ms. Rosenthal reported that New York, Illinois, Maryland and Washington, have filed a lawsuit challenging the legality of the new CMS criteria that were adopted without being formal regulations. Governor Schwarzenegger's office announced that California will support and participate in the lawsuit in the form of an amicus brief. The entity submitting the brief would be the State of California through the Governor's office.

## **ITEM 7. HEALTHY FAMILIES PROGRAM (HFP) UPDATE**

### **ITEM 7a. Enrollment and Single Point of Entry Reports**

Ernesto Sanchez, Assistant Director for Health Care Reform, said that HFP had 835,981 children enrolled in the program, and nearly 26,000 new subscribers enrolled in September, the second highest of any September on record. Nearly 63 percent of applications go to HFP, 27 percent to Medi-Cal and 4 percent to both programs. The report is posted at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/7a\\_HFP\\_Sept\\_2007\\_Enrollment\\_Rpt.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/7a_HFP_Sept_2007_Enrollment_Rpt.pdf). There were no questions or comments.

### **ITEM 7b. Administrative Vendor Performance Report**

Mr. Sanchez reported that the HFP administrative vendor had met all process and quality performance requirements. The report is posted at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/7b\\_HFP\\_Adm\\_Vendor\\_Perf\\_September\\_2007\\_Summary.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/7b_HFP_Adm_Vendor_Perf_September_2007_Summary.pdf). There were no questions or comments.

### **ITEM 7c. Enrollment Entities(EEs)/Certified Application Assistants (CAAs) Reimbursement Report**

Larry Lucero presented the EE/CAA reports. In the first two months of the fiscal year, there has been an average \$75,000 increase in money paid by MRMIB to CAAs and EEs over last year. There were 181 new CAAs and 55 new EEs last month and an average of around 90 percent of those pass web-based training to become CAAs. The report is posted at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/7c\\_EE\\_ReimRpt10.24.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/7c_EE_ReimRpt10.24.pdf). There were no questions or comments.

### **ITEM 7d. 2007 Open Enrollment Results**

Mr. Sanchez presented a report on the 2007 Open Enrollment. HFP shifted to a new open enrollment process in 2007, similar to that at CALPERS. Postcards were sent to families instead of customized packages. Four percent of families who received postcards requested packages be sent to them and 1.35 percent of these families returned their packet, asking for a transfer. The report is located at [http://www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/HFP\\_2007\\_Open\\_Enrollment\\_Results\\_Agenda\\_Item\\_7.d\\_10-24-07.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/HFP_2007_Open_Enrollment_Results_Agenda_Item_7.d_10-24-07.pdf). There were no questions or comments.

## **ITEM 7e. Healthy Families Program Advisory Panel Summary**

Mr. Allenby said that Jack Campana was unable to attend today's meeting because he lives in the area of San Diego hit by the recent fires and has been evacuated.

Shelley Rouillard, Deputy Director Benefits and Quality Monitoring, reported to the Board on the last HFP Advisory Panel meeting. Four new members and three reappointed members were sworn in. Vivian Auble, Department of Health Care Services, and a representative of the Department of Public Health made presentations on the roles of the respective departments. Ms. Auble also discussed the county outreach grants and implementation on SB 437. There were updates on, SCHIP reauthorization, mental health evaluation, general dental anesthesia, community provider plan designation process, the Young Adult Health Care Survey, the Rural Health Demonstration Project proposal solicitation, and dental quality measures. A motion to support the House version of the SCHIP reauthorization bill at that time passed along with a motion to support universal health coverage in California.

There were no questions or comments.

## **ITEM 7f. Cultural and Linguistic Services in the Healthy Families Program, October 2007**

Ms. Rouillard reported that all 34 health, dental and vision plans participated in the survey and their individual responses will be posted today on [www.mrmib.ca.gov](http://www.mrmib.ca.gov). MRMIB does not have resources to audit the plans so the information is self-reported by the plans. She then introduced Rene Moto-Jackson to summarize the findings.

Ms. Moto-Jackson noted that staff redesigned the survey in 2007 to improve consistency of plan responses. The survey included questions about linguistic services, translation of written materials, health plan staff and provider training, monitoring of language assistance services and internal systems development. Responses showed how plans are meeting the needs of limited-English-proficient members. The Department of Managed Health Care published regulations regarding health, dental and vision plans on February 23 with requirements regarding the language assistance program. The DMHC regulations were informed by the HFP requirements. MRMIB staff is working with DMHC staff to assess how the regulations affect HFP. MRMIB staff will work with staff at plans not meeting cultural and linguistic requirements identified in the survey. She thanked the California Panethnic Health Network, the health plans that assisted and Alba Quiroz-Garcia in their efforts to produce the report which is located at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/7f\\_CL\\_summary\\_10-24-07\\_FINAL\\_DRAFT.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/7f_CL_summary_10-24-07_FINAL_DRAFT.pdf).

Dr. Crowell asked if the new survey design was an improvement from earlier ones. Ms. Jackson said that it was better because it allowed for comparison of information

and helped ensure the plans understood what they were being asked. Ms. Rouillard said that some plans are doing innovative, creative work while others could be doing better. MRMIB staff will work with the plans needing improvement.

Mr. Figueroa commented that the DMHC regulations are a floor not a ceiling. So where HFP has a higher standard, those need to stay in place. Ms. Rouillard confirmed that this is correct and next year the survey will hopefully indicate what the plans have done to improve.

There were no other questions or comments.

### **ITEM 7g. Approval of 2008-2009 Plan Contract Amendment Package**

Denise Arend, Chief Deputy Director, presented model contract amendments for health, dental and vision plans. The changes reflect input obtained from health plans, dental plans and vision plans since staff first presented the package to the Board in September. The model contracts are located at [www.mrmib.ca.gov/MRMIB/2008\\_09\\_Plan\\_Contract\\_Amendment.html](http://www.mrmib.ca.gov/MRMIB/2008_09_Plan_Contract_Amendment.html). Ms. Arend asked for the Board's approval of the packages.

Chairman Allenby suggested that the motion approving the package include a provision authorizing staff to make further changes if needed. Dr. Crowell made the motion. Dr. Chang seconded the motion. Prior to the vote, Ms. Cummings suggested that staff inform the Board about how they had strengthened contract language on loss ratio requirements, an improvement the Board had requested at the last meeting.

Ms. Arend said Exhibit B of each contract has a new requirement that plans submit an interim loss ratio that covers the current year and the following year when they submit their rate templates. In addition, staff will specify ways that loss ratios are to be enforced with plans.

The motion was taken up again by Dr. Crowell, seconded by Dr. Chang and passed by the Board.

There were no other questions or comments.

### **ITEM 8. ACCESS FOR INFANTS AND MOTHERS (AIM) UPDATE**

#### **ITEM 8a. Enrollment Report**

Thien Lam, Operations Manager, Eligibility Division, presented the latest report to the Board. In September more than 1,030 new subscribers were enrolled, close to 8,000 subscribers have been enrolled since September 31, 2007. The report is located at [http://www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/8a\\_%20AIM\\_Sept\\_2007\\_Enrollment\\_Rpt.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/8a_%20AIM_Sept_2007_Enrollment_Rpt.pdf). There were no public comments or questions.



## **ITEM 8 b. Administrative Vendor Performance Report**

Ms. Lam presented the latest report to the Board. The contractor met all of its target goals. The report is posted at [http://www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/9c\\_MRMIP\\_Adm\\_Vendor\\_Perf\\_October\\_2007\\_Summary.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/9c_MRMIP_Adm_Vendor_Perf_October_2007_Summary.pdf). There were no comments or questions.

## **ITEM 9. MAJOR RISK MEDICAL INSURANCE PROGRAM (MRMIP) UPDATE**

### **ITEM 9a. Enrollment Report**

Janette Lopez, Deputy Director, Eligibility Division, reported that Ernesto Sanchez has been promoted and that Thien Lam will be taking his previous position. She reported that 458 new MRMIP subscribers were enrolled in September and enrollment is currently 7,898. In September, the cap on MRMIP enrollment was reduced to 8,101. Staff expected to have to begin a waiting list for the program, but enrollment has not yet reached the cap. Blue Cross has been notified to offer enrollment to applicants with a December 1, 2007 effective date. Staff is closely managing the program and expects to establish a waiting list around the second week of November. The last subscribers moved from MRMIP into Guarantee Issue Pilot program – 138 of them – in September. The latest report is posted at [www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/9a\\_MRMIP\\_Sept\\_2007\\_Enrollment\\_Rpt.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/9a_MRMIP_Sept_2007_Enrollment_Rpt.pdf). There were no questions or comments.

### **ITEM 9c. Administrative Vendor Performance Report**

Ms. Lam presented the latest report to the Board. September was the last month that will include GIP data as MRMIB has ceased terminating enrollees with 36 months of coverage. The vendor met all performance standards and the report is located at [http://www.mrmib.ca.gov/MRMIB/Agenda\\_Minutes\\_102407/9c\\_MRMIP\\_Adm\\_Vendor\\_Perf\\_October\\_2007\\_Summary.pdf](http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_102407/9c_MRMIP_Adm_Vendor_Perf_October_2007_Summary.pdf). There were no comments or questions.

### **ITEM 9 d. Disenrollment Survey**

Naomi Yates, Policy Manager, Eligibility, Operations Division, reported on MRMIP disenrollments in January. Staff conducts the survey annually in January as it is the month with the greatest number of disenrollments. Staff assumes that this is due to increases in rates beginning in January. Four hundred twenty-four subscribers, non-MRMIP graduates, were sent surveys, up from 355 in 2006. Seventy-one people responded. Most persons reported dropping coverage because they obtained other coverage. The next most common reason subscribers dropped out of the program was the high premium cost. There were no comments or questions.

There being no further business to come before the Board, the meeting was duly adjourned at 12:55 pm.